

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|-----------------------------|---|-----------------------|
| MYLAN PHARMACEUTICALS INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 23-556 (RGA) |
| |) | |
| BAYER INTELLECTUAL PROPERTY |) | |
| GMBH, BAYER AG, and JANSSEN |) | |
| PHARMACEUTICALS, INC., |) | |
| |) | |
| Defendants. |) | |

**DEFENDANTS’ MOTION TO DISMISS THIS ACTION FOR LACK OF
SUBJECT-MATTER JURISDICTION OR, ALTERNATIVELY, TO STAY**

Pursuant to Federal Rule of Civil Procedure 12(b)(1) and the Court’s inherent discretionary authority, Defendants Bayer Intellectual Property GmbH, Bayer AG, and Janssen Pharmaceuticals, Inc. (collectively, “Defendants”) respectfully request that the Court dismiss this action for lack of subject-matter jurisdiction and, in the alternative, stay this litigation pending the Federal Circuit’s resolution of Defendants’ appeal from the Patent Trial and Appeal Board’s decision in *Mylan Pharms. Inc. v. Bayer Pharma AG*, No. IPR2022-517 (P.T.A.B. July 28, 2023). The grounds for this motion are set forth in Plaintiffs’ Opening Brief filed contemporaneously herewith. A Proposed Order is attached.

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August 21, 2023

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| |) | |
| Defendants. |) | |

[PROPOSED] ORDER

NOW, this ____ day of _____, 2023, the Court having considered Defendants' Motion to Dismiss this Action for Lack of Subject-Matter Jurisdiction or, Alternatively, to Stay ("Motion") (D.I. _____) and all submissions related thereto (D.I. _____):

IT IS HEREBY ORDERED that Defendants' Motion is GRANTED.

IT IS HEREBY FURTHER ORDERED that this action is dismissed.

SO ORDERED this ____ day of _____, 2023

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on August 21, 2023, upon the following in the manner indicated:

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